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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/493,741	01/28/00	LEBL	A-68851-1/DJ

IM52/0605
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EXAMINER	
BEISNER, W	
ART UNIT	PAPER NUMBER
1744	

DATE MAILED: 06/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/493,741

Applicant(s)

LEBL, MICHAL

Examiner

William H. Beisner

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 1-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5,8.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group III, Claims 27-32, in Paper No. 7 is acknowledged.
2. Claims 1-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made ~~without~~ traverse in Paper No. 7.

Priority

3. Applicant's claim of priority under 35 USC 119(e) is improper for the following reasons:

The first line of the specification should recite that the instant application claims benefit of U.S. Provisional Application 60/118,377 filed January 28, 1999 rather than claiming the instant application as a continuation.

With respect to Applicant's request to correct the filing receipt in terms of the filing date of the provisional application, it is suggested that Applicant check the filing receipt for the provisional application. The office database for the provisional application indicates a January 29, 1999 filing date for the provisional application. If this is incorrect, the correction needs to be made in the provisional application rather than the instant application.

Information Disclosure Statement

4. The information disclosure statements filed 24 April 2000, 15 November 2000 and 16 April 2001 have been considered and made of record.

Oath/Declaration

5. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The declaration claims benefit of Provision Application 60/118,377 under 35 USC 120 which is improper.

Drawings

6. The drawings are objected to because Figures 1, 3, 4 and 5 should be identified with separately labeled views. Correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 27-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 27 and 28 indefinite because it is not clear how the recited waste reservoir structurally cooperates with the claimed rotor. The instant claim language merely recites that the reservoir is connected to the centrifuge, however, the only positively recited structure is a rotor.

With respect to claims 30-32, while the claim language further recites the structures of a liquid distribution system and computer, the claim language is devoid of positively recited language which sets forth structural cooperation between these further structures and the previously recited structural elements.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 27, 28 and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by American Hospital Supply (GB 1 241 539).

The reference of American Hospital Supply discloses a centrifuge device (See Figure 3) which includes a rotor, 13, which holds reaction vessels, 26, in a tilted

position. The reaction vessels are communicated with a waste reservoir, 65, with a tube, 64. The rotor includes a liquid distribution system, 39, and the centrifuge is controlled by computer, 36.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over American Hospital Supply (GB 1 241 539) in view of IMMUNO AG.(FR 2.156.519).

The reference of American Hospital Supply has been discussed above.

The instant claim differs by reciting the use of a microtiter plate as a reaction vessel.

The reference of IMMUNO AG. discloses a rotor structure for a centrifuge device which can support a tube or microplate in a tilted manner (See Figure 2).

In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the rotor of the primary reference to support a microplate for the known and expected result of providing an alternative means recognized in the art to achieve the same result, supporting a reaction vessel in a centrifuge rotor. Use of a microplate facilitates the handling and processing of multiple samples.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The references of Aizawa et al.(US 6,045,760); Tamai (JP 64-83153); and Hayasaka (JP 9-24300) are cited as prior art references which pertain to centrifuge devices with rotors which support microplate vessels.

The references of Wells (US 5,178,602) and Wells et al.(US 5,707,331) are cited as prior art which pertains to centrifuge devices which communicate a vessel with a waste reservoir.


The reference of Hutchins et al.(US 5,045,047) is cited as a prior art reference which pertains to liquid distribution systems in a centrifuge device.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 703-308-4006. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:40am to 4:10pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 703-308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7718 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


William H. Beisner
Primary Examiner
Art Unit 1744

WHB
June 1, 2001